



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 17, 1997

Mr. Roger Beecham
Passman and Jones
2500 Renaissance Tower
1201 Elm Street
Dallas, Texas 75270

OR97-2778

Dear Mr. Beecham:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 111371.

The Dallas County Water Control & Improvement District No. 6 (the "district") received an open records request for fourteen categories of information.¹ You have submitted to this office for review copies of documents responsive to seven of those categories.² We will discuss each of the categories and the exceptions to required public disclosure you have raised for each of them in turn.

Item 3 of the open records request includes all documents relating to "the hiring of W.M. McClelland to appraise the old wastewater treatment plant property owned by [the district]," including documents of related charges incurred by the district and all materials the district provided to the appraiser prior to the appraisal process. Similarly, Item 4 of the request includes all documents relating to the hiring of "a geologist and/or geotechnical firm to study the material makeup of the old wastewater treatment plant," including "documents of charges or estimates/contract amount." You contend these two categories of information are excepted from required public disclosure pursuant to section 552.105(2) of the Government Code.

¹The requestor also asked for "a list of documents withheld with the reason for withholding the documents or part of documents." Although the federal Freedom of Information Act requires federal agencies to create such lists for documents withheld from the public, *see* 5 U.S.C. § 552(a)(6)(A)(i), there is no such requirement under the Open Records Act. *See also* Open Records Decision No. 445 (1986) (governmental body not required to prepare new information in response to open records request).

²We assume the district will make available to the requestor the remaining categories of information.

Section 552.105(2) of the Government Code protects "appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property." Section 552.105 is designed to protect a governmental body in its planning and negotiating position in regard to particular transactions. Open Records Decision No. 357 (1982). You contend section 552.105 protects Items 3 and 4 because the release of these documents "would affect the District's ability to obtain the best price for the property should it be sold."

In this instance, we conclude that you have not demonstrated that the information at issue pertains to any specific transaction concerning the sale of the property; rather, you seem to allude to the possibility of the sale of the property to some unknown individual in the future. Such speculation cannot serve as a basis for withholding this information from the public under section 552.105. Because you have failed to establish that section 552.105(2) is applicable to Items 3 and 4 at this time, the district must release these documents in their entirety.

Item 5 of the open records request includes documents relating to the individuals and companies that complained of high water bills to the district's board of directors during public meetings, including the amount of the original water bills, the adjusted amount, the manner in which the amount was accounted, and the identity of those who did and did not receive adjustments to their water bills. Item 6 includes documentation of those individuals and companies who complained in public meetings of sewage problems and requested refunds on plumbing bills and the identity of those who did and did not receive adjustments to their water bills. Items 13 and 14 include other related documents. You state that, except for those portions of the minutes of the public meetings that are responsive to the requests, the requested information can only be derived from each water customers' account histories, which you contend are protected by common-law privacy.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information coming within the common-law right to privacy. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85. This is not a balancing test: both prongs of this test must be met to withhold information under the common-law privacy doctrine.

It is well established that the public has a legitimate interest in knowing who owes money to a governmental body. *See, e.g.*, Open Records Decision No. 480 (1987). Consequently, a public entity's utility bill ledgers are not confidential under common law privacy. Open Records Decision No. 443 (1986). Accordingly, none of the information

responsive to Items 5, 6, 13, or 14 may be withheld pursuant to common-law privacy. *But see* Util. Code § 182.052 (public utility customer's home address, telephone number, and social security number must be maintained as confidential if customer has so requested in accordance with statute). *See generally* Open Records Decision No. 625 (1994).

Finally, you contend that the attorney billing statements requested in Item 9 are excepted from public disclosure pursuant to the attorney-client privilege and the work product privilege to the extent they consist of descriptions of legal services provided to the district. In Open Records Decision No. 647 (1996), this office concluded that a governmental body may withhold "attorney work product" under either section 552.103 or section 552.111 of the Government Code if the governmental body can show 1) that the information was created for trial or in anticipation of litigation under the test articulated in *National Tank v. Brotherton*, 851 S.W.2d 193 (Tex. 1993), and 2) that the information consists of or tends to reveal an attorney's "mental processes, conclusions, and legal theories." Open Records Decision No. 647 (1996) at 5 citing *United States v. Nobles*, 422 U.S. 225, 236 (1975)). Some of the attorney fee bills reveal on their face that the legal services were performed during the course of pending litigation. Because we believe that all of the itemized descriptions contained in those billing statements necessarily tend to reveal an attorney's "mental processes, conclusions, and legal theories," we conclude that all such descriptions may be withheld from the public as attorney work product. We have marked the portions of the billing statements that may be withheld under section 552.103.

On the other hand, most of the billing statements submitted to this office do not appear to relate to pending or reasonably anticipated litigation, nor have you argued such. We therefore must determine the extent to which the remaining descriptions of legal services performed are protected by the attorney-client privilege. Section 552.107(1) of the Government Code protects information "that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct." *See* Open Records Decision No. 574 (1990). In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney's legal advice and confidential attorney-client communications. *Id.* Accordingly, these are the only two classes of information contained in the records at issue that may be withheld pursuant to the attorney-client privilege. *See also* Open Records Decision No. 589 (1991) (protected information in attorney billing statements) *overruling to extent of conflict* Open Records Decision No. 304 (1982).

Although the invoices submitted to this office contain notations that a privileged communication may have taken place, the notations do not reveal the substance of those communications, but rather merely describe a general area of concern, the release of which would not constitute a breach of the attorney-client privilege. We have marked the

information in the billing statements that appears to consist of either a client confidence or an attorney's legal opinion that the district may withhold pursuant to section 552.107(1).³ The remaining portions of the billing statements must be released to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Hastings
Assistant Attorney General
Open Records Division

KHH/RWP/rho

Ref.: ID# 111371

Enclosures: Marked documents

cc: Mr. Lonnie R. Sikes
3716 Peachtree Road
Balch Springs, Texas 75180
(w/o enclosures)

³We note, however, that any of the marked information that has already been disclosed to the public, either in public meetings or in some other manner, may not be withheld under the attorney-client privilege. Open Records Decision No. 412 (1984).